

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

**ROBERT M. HERRIN**

Serial No. 10/721,962

Filing Date: 11/25/2003

For: **TRAY FORMING APPARATUS**

Examiner:

**Christopher R. Harmon**

Group Art Unit: 3721

Attorney Docket No. 7703.26

Asst. Commissioner for Patents  
Alexandria, VA 22313-1450

Sir:

**DECLARATION OF MARK KENYON**

**UNDER 37 CFR § 1.132**

I, Mark Kenyon, do hereby declare and say as follows:

1. I have 25 years experience in machinery manufacturing. I was employed at Leroy Smith & Son where I was responsible for the plant maintenance, training and operation of all equipment. During my tenure, we purchased two tray formers from R&L Manufacturing, Inc.

2. The first tray former was purchased in 1999 to form what is commonly known as a Euro Tray. It is clear to me that this first tray former was manufactured using the technology and teachings of U.S. Patent No. 5,971,906.

3. In 2002, we changed from the Euro Tray to a second tray former referred to as a double glued corner style tray that is described in the above referenced Herrin application. The first tray former could not form the double glued corner styled tray.

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Modification of the first tray former was not an option as the forming elements making up the structure of the second tray former and their relationship to each other was very different. It was clear to us that we needed a different tray former. We therefore decided to purchase the second tray former to be able to construct the double glued corner tray. The forming elements and structures of each tray former are very different and neither machine will suffice for the other.

4. I am familiar with the Tharpe '906 patent and I have read the Examiner's opinion and interpretation of the Tharpe '906 patent with regard to claims pending in the above-referenced U.S. utility patent application. The Examiner selected features described in the Tharpe '906 patent for one tray forming apparatus and determined that the Tharpe '906 patent would allow one of skill in the art to make the Herrin apparatus based on his selected features. The Examiner interpreted elements in the Tharpe '906 patent and suggested that one of skill in the art could modify the Tharpe '906 apparatus to form the Herrin apparatus simply by applying engineering choices.

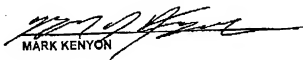
5. Based on our review of the apparatus described by the Tharpe '906 patent and the Herrin apparatus that is the subject of the above application, it was clear that a modification to the Tharpe '906 apparatus was not an option if we wanted to have a tray former to form the double glued corner tray structure. As above described, we therefore purchased the Herrin apparatus.

6. I disagree with the Examiner in his interpretation of the teachings of the Tharpe '906 patent and in his conclusion that the Herrin apparatus would be obvious to one of skill in the art given the teachings of the Tharpe '906 patent and engineering design choices. It is my opinion that the teachings of the Tharpe '906 patent do not

provide sufficient guidance to one skilled in the art to make modifications that result in the apparatus of Herrin.

7. I hereby declare that all statements made herein of my own accord are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that any such willful false statements may jeopardize the validity of the application or any patent issued thereon.

8-22-06  
Date

  
MARK KENYON